

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Samuel Love,

Plaintiff,

V.

FR3SH, Inc., a California Corporation; and Does 1-10,

Defendants.

Case No.

Complaint For Damages And Injunctive Relief For Violations Of: American's With Disabilities Act; Unruh Civil Rights Act

Plaintiff Samuel Love complains of FR3SH, Inc., a California Corporation; and Does 1-10 (“Defendants”), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a paraplegic who uses a wheelchair for mobility.

2. Defendant FR3SH, Inc. owned Fresh Apparel located at or about 1150 El Camino Real, San Bruno, California, in September 2019.

3. Defendant FR3SH, Inc. owns Fresh Apparel (“Store”) located at or about 1150 El Camino Real, San Bruno, California, currently.

4. Plaintiff does not know the true names of Defendants, their business

1 capacities, their ownership connection to the property and business, or their
2 relative responsibilities in causing the access violations herein complained of,
3 and alleges a joint venture and common enterprise by all such Defendants.
4 Plaintiff is informed and believes that each of the Defendants herein,
5 including Does 1 through 10, inclusive, is responsible in some capacity for the
6 events herein alleged, or is a necessary party for obtaining appropriate relief.
7 Plaintiff will seek leave to amend when the true names, capacities,
8 connections, and responsibilities of the Defendants and Does 1 through 10,
9 inclusive, are ascertained.

10

11 **JURISDICTION & VENUE:**

12 5. The Court has subject matter jurisdiction over the action pursuant to 28
13 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
14 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

15 6. Pursuant to supplemental jurisdiction, an attendant and related cause
16 of action, arising from the same nucleus of operative facts and arising out of
17 the same transactions, is also brought under California's Unruh Civil Rights
18 Act, which act expressly incorporates the Americans with Disabilities Act.

19 7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
20 founded on the fact that the real property which is the subject of this action is
21 located in this district and that Plaintiff's cause of action arose in this district.

22

23 **FACTUAL ALLEGATIONS:**

24 8. Plaintiff went to the Store in September 2019 with the intention to avail
25 himself of its goods and to assess the business for compliance with the
26 disability access laws.

27 9. The Store is a facility open to the public, places of public
28 accommodation, and business establishments.

1 10. One of the facilities, privileges or advantages enjoyed by customers at
2 the Store is an electronic point of sale machine that has a display screen with
3 directions and information for the customer, a card reader to take credit cards
4 and buttons to be pressed. This permits easy and private transaction
5 opportunities to customers at the Store.

6 11. Unfortunately, the display screen is mounted so that it is not visible by a
7 wheelchair user. The information on the display screen is not visible from a
8 viewpoint 40 inches above the floor. Moreover, the display screen is angled
9 away from the viewer and faces the ceiling and the center line of the display
10 screen is located about 45 inches above the floor. On information and belief,
11 plaintiff alleges that this point of sale machine was installed sometime after
12 1995 and is, therefore, subject to California Accessibility Standards in
13 addition to ADA standards.

14 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
15 to provide accessible electronic point-of-sale machines that customers can use
16 to swipe their credit cards.

17 13. On information and belief, the defendants currently fail to provide
18 accessible electronic point-of-sale machines that customers can use to swipe
19 their credit cards.

20 14. Plaintiff personally encountered this barrier.

21 15. By failing to provide accessible facilities, the defendants denied the
22 plaintiff full and equal access.

23 16. The lack of accessible facilities created difficulty and discomfort for the
24 Plaintiff.

25 17. The defendants have failed to maintain in working and useable
26 conditions those features required to provide ready access to persons with
27 disabilities.

28 18. The barriers identified above are easily removed without much

1 difficulty or expense. They are the types of barriers identified by the
2 Department of Justice as presumably readily achievable to remove and, in fact,
3 these barriers are readily achievable to remove. Moreover, there are numerous
4 alternative accommodations that could be made to provide a greater level of
5 access if complete removal were not achievable.

6 19. Plaintiff will return to the Store to avail himself of its goods and to
7 determine compliance with the disability access laws once it is represented to
8 him that the Store and its facilities are accessible. Plaintiff is currently deterred
9 from doing so because of his knowledge of the existing barriers and his
10 uncertainty about the existence of yet other barriers on the site. If the barriers
11 are not removed, the plaintiff will face unlawful and discriminatory barriers
12 again.

13 20. Given the obvious and blatant nature of the barriers and violations
14 alleged herein, the plaintiff alleges, on information and belief, that there are
15 other violations and barriers on the site that relate to his disability. Plaintiff will
16 amend the complaint, to provide proper notice regarding the scope of this
17 lawsuit, once he conducts a site inspection. However, please be on notice that
18 the plaintiff seeks to have all barriers related to his disability remedied. See
19 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
20 encounters one barrier at a site, he can sue to have all barriers that relate to his
21 disability removed regardless of whether he personally encountered them).

22

23 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
24 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
25 Defendants.) (42 U.S.C. section 12101, et seq.)

26 21. Plaintiff re-pleads and incorporates by reference, as if fully set forth
27 again herein, the allegations contained in all prior paragraphs of this
28 complaint.

1 22. Under the ADA, it is an act of discrimination to fail to ensure that the
2 privileges, advantages, accommodations, facilities, goods and services of any
3 place of public accommodation is offered on a full and equal basis by anyone
4 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
5 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 6 a. A failure to make reasonable modifications in policies, practices,
7 or procedures, when such modifications are necessary to afford
8 goods, services, facilities, privileges, advantages, or
9 accommodations to individuals with disabilities, unless the
10 accommodation would work a fundamental alteration of those
11 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 12 b. A failure to remove architectural barriers where such removal is
13 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
14 defined by reference to the ADA Standards.
- 15 c. A failure to make alterations in such a manner that, to the
16 maximum extent feasible, the altered portions of the facility are
17 readily accessible to and usable by individuals with disabilities,
18 including individuals who use wheelchairs or to ensure that, to the
19 maximum extent feasible, the path of travel to the altered area and
20 the bathrooms, telephones, and drinking fountains serving the
21 altered area, are readily accessible to and usable by individuals
22 with disabilities. 42 U.S.C. § 12183(a)(2).

23 23. When a business provides facilities such as electronic point-of-sale
24 machines, it must provide accessible electronic point-of-sale machines.

25 24. Here, accessible electronic point-of-sale machines have not been
26 provided.

27 25. The Safe Harbor provisions of the 2010 Standards are not applicable
28 here because the conditions challenged in this lawsuit do not comply with the

1 1991 Standards.

2 26. A public accommodation must maintain in operable working condition
3 those features of its facilities and equipment that are required to be readily
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 27. Here, the failure to ensure that the accessible facilities were available
6 and ready to be used by the plaintiff is a violation of the law.

7

8 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
9 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
10 Code § 51-53.)

11 28. Plaintiff repleads and incorporates by reference, as if fully set forth
12 again herein, the allegations contained in all prior paragraphs of this
13 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
14 that persons with disabilities are entitled to full and equal accommodations,
15 advantages, facilities, privileges, or services in all business establishment of
16 every kind whatsoever within the jurisdiction of the State of California. Cal.
17 Civ. Code § 51(b).

18 29. The Unruh Act provides that a violation of the ADA is a violation of the
19 Unruh Act. Cal. Civ. Code, § 51(f).

20 30. Defendants’ acts and omissions, as herein alleged, have violated the
21 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
22 rights to full and equal use of the accommodations, advantages, facilities,
23 privileges, or services offered.

24 31. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
25 discomfort or embarrassment for the plaintiff, the defendants are also each
26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
27 (c).)

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: October 17, 2019

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By:



Amanda Seabock, Esq.
Attorney for plaintiff